

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

THOMAS F. BROWN,)
)
)
Plaintiff,)
)
)
v.) Case No. 16-00879-CV-W-_____
)
)
SHARON HENRY, and THE UNITED STATES OF)
AMERICA (as the real party in interest on behalf of)
Sharon Henry),)
)
)
Defendants.)

**NOTICE OF REMOVAL TO
FEDERAL COURT**

Pursuant to 28 U.S.C. § 1446, Sharon Henry and the United States of America (as the real party in interest of named defendant Sharon Henry) respectfully notify the United States District Court for the Western District of Missouri, Western Division, as follows:

1. On or about July 16, 2013, plaintiff Thomas F. Brown (“Brown”) filed his PETITION FOR DAMAGES in the Circuit Court of Jackson County, Missouri, commencing a civil action against named defendant Sharon Henry (“Henry”), *Thomas F. Brown v. Sharon Henry*, Case No. 1616-CV17404 (“the State Court Action”). A copy of the PETITION FOR DAMAGES filed in the State Court Action is attached hereto as **EXHIBIT A**.

2. The State Court Action alleges that Brown sustained personal injuries based on the alleged infliction of emotional distress by Henry while she was Brown’s supervisor with the General Services Administration (“GSA”), an agency of the Executive branch and component of the federal government.

3. During all dates relevant to the allegations set out in the State Court Action, Henry was employed by GSA.

4. Moreover, all of the acts, alleged malfeasance, and/or alleged nonfeasance attributed to Henry in the State Court Action were within the scope of Henry's federal employment with GSA. To that end, pursuant to 28 U.S.C. § 2679(a), (d)(2), and the APPENDIX to 28 C.F.R. § 15.3, the United States Attorney for the Western District of Missouri has certified that Henry, at all times material to the allegations set out in the State Court Action, was acting within the scope of her duties as an employee of GSA and, accordingly, is deemed by the United States to be an "employee of the government" who was "acting within the scope of h[er] office or employment" for purposes of 28 U.S.C. § 2679 and other provisions of the Federal Tort Claims Act as well as for purposes of Title VII of the Civil Rights Act of 1964, as revised. A copy of the CERTIFICATION is attached hereto as **EXHIBIT B**.

5. Inasmuch as, at all relevant times to the allegations raised in the State Court Action, Henry was acting within her scope as an employee of the federal government, Brown's state law tort claims are cognizable, if at all, only under the Federal Torts Claims Act, 28 U.S.C. §§ 1346, *et seq.* ("FTCA"). *Brown v. Armstrong*, 949 F.2d 1007, 1010 (8th Cir. 1991) ("the FTCA is an exclusive remedy for torts committed by federal employees acting within the scope of their employment"). As such, the State Court Action lies within the exclusive jurisdiction of the federal district courts, 28 U.S.C. §§ 1346(a)(2), 1346 (b)(1), and is immediately removable to the federal district courts. 28 U.S.C. § 1442(a)(1) 2679(d)(2) (following certification, "any civil action or proceeding commenced in . . . a State court shall be removed without bond at any time before trial").

6. Pursuant to 28 U.S.C. §§ 1441, 1442 and 1446, this case is hereby removed to the United States District Court for the Western District of Missouri and said Court now has the jurisdiction over this action.

7. Inasmuch as the State Court Action was filed in Jackson County, Missouri, this case must be removed to the Western Division said court. 28 U.S.C. §§ 105(b)(1), 1446(a).

8. A copy of a WRITTEN NOTICE OF FILING OF REMOVAL, directed to the state court and to Brown (who appears *pro se*) is attached as **EXHIBIT C**. The WRITTEN NOTICE OF FILING OF REMOVAL will be filed promptly with the state court after the filing of this pleading.

WHEREFORE, named defendant Sharon Henry and putative defendant the United States of America (as the real party in interest for named Sharon Henry) request the United States District Court for the Western District of Missouri, Western Division, to forthwith assume full jurisdiction over the cause as provided by law.

Respectfully submitted,

Tammy Dickinson
United States Attorney

By /s/ *Jeffrey P. Ray*

Jeffrey P. Ray
Deputy United States Attorney
Missouri Bar No. 35632

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ATTORNEYS FOR NAMED DEFENDANT
SHARON HENRY and PUTATIVE DEFENDANT
THE UNITED STATES OF AMERICA (as the real party in interest for named defendant Sharon Henry)

CERTIFICATE OF SERVICE

The undersigned Deputy United States Attorney hereby certifies that a true and correct copy of the foregoing **NOTICE OF REMOVAL TO FEDERAL COURT** was electronically filed with the Clerk of the Court using the CM/ECF system on this 11th day of August, 2016. In addition, a true and correct copy of the foregoing **NOTICE OF REMOVAL TO FEDERAL COURT** was placed in the United States first class mail, postage prepaid, and addressed to:

Thomas F. Brown
12900 West 125th Street
Overland Park, Kansas 66213

PRO SE PLAINTIFF

on this 11th day of August, 2016.

/s/ Jeffrey P. Ray
Jeffrey P. Ray
Deputy United States Attorney